

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.21510/2005**

% **Dated: 10.02.2009**

M/s United Engineers Service Station Petitioner

Through Mr. Kamal Mehta with Mr. Rajesh
Sachdeva & Mr. Sudeep Singh,
Advocates

Versus

**Akhil Bhartiya Krantikari
Mazdoor Union & Ors.**

.... Respondents

Through Mr. N.A. Sabastian, Advocate for
respondent No.1.
Mr. Mohd. Nadeem Khan for Ms.
Sujata Kashyap, Advocate for
respondents No.2 & 3.

**CORAM
HON'BLE MR. JUSTICE V.K. SHALI**

1. Whether reporters of Local papers may be
allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported
in the Digest? NO

V. K. SHALI, J. (Oral)

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1. I have heard the learned counsel for the parties and with
their consent, I proceed to dispose of the writ petition on merits.

2. The petitioner in the instant writ petition has challenged an
ex-parte award dated 27th June, 2003 in ID No.357/1999 titled
M/s United Engineering Service Station Vs. Shri Doodh Nath &
Ors. by virtue of which the Ld. Labour Court-IX, Karkardooma,

Delhi had held the termination of services of Doodh Nath Tewari, Kuldeep Singh, Jai Ram, Kamal Pandey, Roshan Lal, Gulab Singh, Sanjeev Kumar, Chaman Singh, Mastu Singh, Vipin Saxena & Surender Singh as illegal and unjustified and accordingly directed reinstatement of the 11 workers with continuity of service and other consequential benefits.

3. One of the grounds on which the award has been challenged is that the petitioner management was never served and accordingly they did not get an opportunity to present their stand before the learned Labour Court in opposition to the statement of claim filed by the respondents/workmen.

4. Only one counter affidavit on behalf of Doodh Nath Tewari has been to the writ petition on filed wherein it has been stated that the petitioner/management having participated in the conciliation proceedings was fully aware of the pendency of the proceedings before the Labour Court and thus there is no ground for setting ex parte proceedings.

5. I have heard learned counsel for the parties and perused the record. There is no dispute about the fact that the respondents/workmen were employed on the petrol pump which was being run by M/s United Engineering Service Station near Bus Depot. Nehru Place, Kalkaji, New Delhi-19. On 21st July, 1999, the dealership of the petitioner company was terminated

and the possession of the petrol pump was taken by the Indian Oil Corporation. On account of this fact, it seems that the services of the respondents/workmen were dispensed with which resulted in making a reference to the Labour Court-IX, Tis Hazari, Delhi by the Secretary(Labour), Govt. of NCT of Delhi on 8th September, 1999. On 20th September, 1999, the Presiding Officer of the Labour Court-IX, Karkardooma Delhi registered the reference and invited the statement of claim by issuing notices to the workmen.

6. The petitioner herein has placed on record the photocopies of the order sheets of the learned Labour Court which show that on 18th April, 2000 one, Sh. Uday Pratap, authorized representative of the workmen had appeared and filed the statement of claim. Simultaneously he also filed an application for issuing the summons in the name of Indian Oil Auto Centre. It will be pertinent here to mention that the reference was made to the Labour Court against M/s United Engineering Service Station and so was the statement of claim filed by the respondents/workmen against the said company. An application regarding issuance of summons in the name of Indian Oil Auto Centre was filed by the respondent/workman, Doodh Nath Tewari wherein he had admitted that the dealership of Rajesh Sachdeva was terminated by the Indian Oil Corporation, but M/s United Engineering Service Station, was alleged to be running petrol

pump under the name of Indian Oil Auto Centre and therefore it was prayed that summons be issued in the name of M/s United Engineering Service Station C/o Indian Oil Auto Centre. The supporting affidavit to this shows that the summons itself were prayed to be issued against Indian Oil Auto Centre as against United Engineering Service Station.

7. The order sheet shows that instead of issuing the summons in the name of M/s United Engineering Service Station C/o Indian Oil Auto Centre, the summons itself were issued in the name of Indian Oil Auto Centre which are purported to have been received by them and on account of this, the learned Presiding Officer on 14th August, 2000 has proceeded ex-parte against M/s United Engineering Service Station.

8. It may be pertinent here to refer to Rule 18 of the Industrial Disputes (Central) Rules, 1957 which reads as under :

“18. Service of summons or notice. – Subject to the provisions contained in rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, National Tribunal or an Arbitrator empowered to issue such notice, summons, process or order, may be served either personally or by registered post and in the event of refusal by the party concerned to accept the said notice, summons, process or order, the same shall be sent again under certificate of posting.”

9. A perusal of the aforesaid rules will clearly show that the service has to be effected personally or by registered A.D. by the

Labour Court. In the instant case, admittedly the statement of claim was filed against M/s United Engineering Service Station and therefore the summons ought to have been issued against M/s United Engineering Service Station only. The summons itself have been issued through registered A.D. in the name of Indian Oil Auto Centre because the postal receipt and the A.D. card which have been filed by the petitioner indicates so. The learned Labour Court without any application of mind, has on the basis of the said service of registered A.D. letter assumed that M/s United Engineering Service Station has been served and accordingly proceeded ex-parte against them, whereas the fact of the matter is that no valid service was ever effected on M/s United Engineering Service Station and accordingly they did not come to know about the proceedings pending against them before the Labour Court. The ex-parte award was passed against the petitioner on 27th June, 2003.

10. The petitioner has contended that they learnt about the ex-parte award only on receipt of a recovery certificate dated 19th April, 2004 when a demand for approximately Rs.16.00 lakhs was made whereupon they got activated and they filed an application under Order 9 Rule 13 of the CPC for setting aside ex-parte award which was dismissed and consequently they chose to file the present writ petition.

11. From the aforesaid facts, it is clear that no valid service was ever effected on the petitioner and therefore they could not have been assumed to have been served much less proceeded ex-parte by the learned Labour Court. This, in my view, constitutes a sufficient cause which prevented the petitioner management for being able to attend the proceedings before the Labour Court.

12. The contention of the learned counsel for the respondent that the petitioner participated in the conciliation proceedings and therefore they were aware of the pendency of the proceedings before the Labour Court is of no consequence because they have to be served according to law at least once by the learned Labour Court after receipt of reference. Even if the petitioner had the knowledge of the pendency of the matter and are observing the proceedings from the sidelines, it will not absolve the Labour Court from serving them in accordance with Rule 18 at least once before proceeding ex parte against them.

13. Accordingly the ex-parte award of the Labour Court is set aside and the matter is remanded back, however this shall be subject to a payment of costs of Rs.5,000/- to each of the workmen before the learned Labour Court.

14. It is contended by the learned counsel for the petitioner that the workmen may take the costs personally to which the learned counsel for the respondents has no objection. Parties are directed

to appear before the learned Labour Court No.IX, Karkardooma, Delhi on 3rd March, 2009 and it is hoped that the learned Labour Court shall proceed with the matter after obtaining the reply of the petitioner management as expeditiously as possible and decide the same.

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15. These are the applications filed under Section 17-B of the Industrial Disputes Act. Since the ex-parte award itself has been set aside and the matter is being remanded back to the learned Labour Court for adjudication on merits, therefore no separate order is called for on these applications as they have become infructuous.

16. The applications are disposed of accordingly as having become infructuous.

No order as to costs.

FEBRUARY 10, 2009
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V.K. SHALI, J.